IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY E. CANNING,)
)
Plaintiff,) Case No. 4:18 CV-03023
)
vs.)
)
CREIGHTON UNIVERSITY,)
) (CONT'D) DEPOSITION OF
Defendant.) BRADLEY DeVRIEZE, M.D.
)

(CONT'D) DEPOSITION OF BRADLEY DeVRIEZE, M.D., taken before Tammy J. Hetherington, RPR, CSR, and General Notary Public within and for the State of Nebraska, beginning at 9:32 a.m., on Friday, the 14th of December, 2018, at 12910 Pierce Street, Suite 200, Omaha, Nebraska, to be read in evidence on behalf of the plaintiff, pursuant to the Federal Rules of Civil Procedure and the within stipulations.

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Also Present: Ms. Mary Canning
Mr. David Meiergerd

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(Whereupon, the parties have stipulated to waive Nebraska Rule 6-330, Sections 8(A) and (C), and the following proceedings were had, to wit:)

BRADLEY DeVRIEZE, M.D.,
having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION (CONT'D)

BY MR. ZALEWSKI:

Q. Doctor, we're picking up where we -- to continue your deposition from the last time, so I'm not going to go through all the instructions. I guess, just to remind you, you're still under oath, and if you don't understand my question, tell me, and I'll try to rephrase it, all right?

09:31AM A. Yes.

Q. And, also, I guess, to give the audible answer, just to make sure we get that on the record.

I want to start when Mary Beth Canning was coming back right around the start of her repeat year, okay?

09:31AM When did you find out she was going to repeat the year?

A. It was relayed to us at a core faculty meeting. I don't remember which meeting it was.

Q. Did they start, like, in June or July; is that right?

A. The residents start July 1st, yeah.

09:32AM **Q.** So sometime, maybe, in June, you would have found out?

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A. I don't recall writing it, no.
Q. Tell me how the system works. After the CCC makes a recommendation on this, it goes to Dr. Cichowski, right?
10:34AM A. Yes.
Q. Is there any involvement by the CCC after that point?
MR. BUNTAIN: Are you talking about in this specific instance?
Q. (BY MR. ZALEWSKI) Yes, when you're terminating a
10:34AM resident.
A. At that point, it went to Dr. Cichowski and to the graduate medical education office.
Q. Right. My question is, does the CCC involvement continue, or does it stop there?
10:34AM A. It would have stopped at that point.
(A break was taken.)
(Exhibit No. 41 marked for identification.)
Q. (BY MR. ZALEWSKI) Dr. DeVrieze, the reporter handed you Exhibit 41. What I want you to look at is the
10:42AM second page, it talks about a probation meeting; do you see that? At the bottom, the second page, on the bottom, it starts off with, Probation Meeting.
A. Yes.
Q. Okay. And it says that you and Mary Beth met with
10:43AM Erica Cichowski. If you would, please let me know when

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you've finished reading this, and tell me if you agree it's accurate notes of what happened at that meeting.
A. (Witness reviewing Exhibit 41.) Yes.
Q. Is that an accurate summary of what you discussed at
10:44AM that probation meeting?
A. Yes.
Q. On the top of Page 3, there's a discussion about the lady with ovarian cancer; do you see that?
A. Yes.
10:44AM Q. Did Mary Beth explain to you that she was simply telling the patient what her options were about the opioid addiction, and not trying to deny her treatment?
A. I don't recall that conversation.
Q. Do you recall anything else about the meeting, now that
10:44AM you've seen these notes?
A. No.
Q. This, pretty much, summarizes what happened that day?
A. Yes.
Q. Let me ask you this: Did the CCC talk to either
10:45AM Dr. Timothy Griffin or Dr. Carolyn Manhart before deciding on the probation for Mary Beth Canning?
A. I don't remember.
Q. The reason I ask is they both submitted letters on her appeal, but I just wondered if you had information from
10:45AM them before you made the probation decision.

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A. I never had a conversation with either of those two prior to that.
Q. And would you have seen any information they submitted on behalf of Mary Beth Canning at the time you made the
10:45AM probation decision?
A. Only evaluations.
Q. Not the letters, then?
A. I don't believe so.
Q. And you didn't call either one of them to talk about
10:45AM how she's performing for them?
A. I did not, no.
Q. Do you know if anybody at the CCC did, or brought that up?
A. Not that I recall.
10:45AM Q. What kind of involvement did you have, with respect to Mary Beth Canning, after that termination decision?
A. I don't know that I had any.
Q. Okay. Did you, for example, talk to the appeals committee at all, when she appealed the decision,
10:46AM either on probation or termination?
A. I don't recall doing that.
Q. Okay.
(Exhibit No. 42 marked for identification.)
Q. (BY MR. ZALEWSKI) Dr. DeVrieze, I've handed you
10:47AM Exhibit 42. I'd ask you if you've seen that document

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before.
A. It appears I wrote it, yes.
Q. Okay. And it looks like it went to the appeals committee, correct?
10:47AM A. Yes.
Q. Do you know if anybody asked you to make that comment, if you did it voluntarily, or how that occurred?
A. I don't remember.
Q. Would it be your practice to send something to the
10:47AM appeals committee if you heard a resident was appealing a decision?
A. Probably not unsolicited.
Q. Do you see on top, it says, J. E. Lambrecht on there?
A. Yes.
10:47AM Q. Do you recall if Dr. Lambrecht asked you to write the letter?
A. No, I don't recall that.
Q. Anything else you recall about sending on Exhibit 42?
A. No.
10:47AM Q. Did you ask Dr. Lambrecht anything about what should be put in the letter you sent on January 16th?
MR. BUNTAIN: I'm going to state, for the record, this shows it's Page 4 of a larger document.
10:48AM MR. ZALEWSKI: Right. This is an

Nelson,

From:
Sent: Thursday, January 02, 2017 9:45 AM
To: Nelson, Julie L.
Subject: FW: Documentation
Attachments: ResidentReport_Canning_9444_[illegible]37PM.PDF

Here is the [illegible]

From:
Sent:
To:
Subject:

Dear [illegible]

I sincerely [illegible] **Competency** [illegible] **in the** [illegible]

On 12/25/16, I was called by one of our **Hospital Medicine Service (HMS)** attendings with serious concerns about MBC's **performance** in relation to patient safety. A patient, admitted for [illegible] **12/24/16** by MBC's chart and consultants despite attempted and repeated efforts to review the [illegible] with **her** in detail, [illegible] was MBC's response when notified of the error. She told her attending that she **was sure** she had continued the patient's home medications upon discharge. This statement signified [illegible] **understanding** of the sole purpose of the patient's admission: she failed the Coumadin she'd been on at home and **needed** to be changed to a novel agent. An IRIS report was entered. Additionally, MBC was unable to complete [illegible] **rounds** in time for [illegible] rounds on 12/24/16 which may have contributed to the error. With the [illegible] **have** outlined serious competency concerns, MBC's failure to adequately improve performance, need for ongoing **direct** supervision and denotes supervisor and attending efforts, an egregious patient safety near miss occurred.

Marybeth came to us with nearly 8 years gap between medical school and residency, with very little clinical experience between. Our hope was that her tremendously positive attitude, compassionate demeanor, heart for service and passion for the Jesuit values, she would overcome this deficit and meet expectations after a steep learning curve. Regrettably, this has not been the case. Marybeth's deficiencies in patient care skills and medical knowledge have proven too great for her to overcome.

As you will see in the documentation provided, Marybeth has not been able to progress beyond full direct supervision because her foundation is so weak that she has not been able to build upon it with nearly 12 months of residency experience. You'll find clear documentation from her peers and attendings of her inability to consistently assess patients and propose a plan of care without significant support and delays in care. She cannot consistently place nor follow up on orders, nor synthesize those results accurately to adjust the plan of care appropriately. She cannot consistently prepare patients for discharge, nor facilitate a safe and timely discharge without significant support from her supervisors. I have received numerous unsolicited reports that MBC requires so much of the supervisor and attending's time and oversight that co interns are not consistently able to get the attention and teaching they need. Co interns are consistently unequally yoked with workload that MBC cannot handle. Medical student experience on her teams are negatively impacted, as they do not get the attention or teaching from the supervisors. Nursing staff have created work arounds, avoiding paging MBC and going directly to the supervisor, as they have lost confidence that MBC

can provide safe care for patients. Of note, you'll see that the nursing supervisor gave MBC 5 (aspirational) marks on the nursing [illegible] degree evaluation and comm[illegible]r she was ready for unsupervised practice, but this was [illegible] all residents in the nursing program evaluated and as appropriately the CCC was unable to willingly [illegible] evaluation is something that is being [illegible] different. Growth & early development is something we are striving for. However, you will see that MBC's [illegible] diagram clearly reflects she is performing significantly lower than her intern peers.
INSERT SPIDER PIC

See below [illegible] evaluation scale we use for the RRMS intern evaluation. CCC will [illegible] which interns [illegible] progress to be [illegible] Marybeth [illegible] evaluation [illegible] and occasionally at 2.

Level 1	Level 2	Level 3	Level 4
[illegible]	[illegible]	[illegible]	[illegible]

The CCC feels that our program has given MBC 12 months of residency training, and while she's improved some, her incompetencies negatively impacting patient safety and does not predict success in the future. Her insight into her deficiencies has been very poor throughout. She does not seem to have insight into the fact that her patient care and medical knowledge deficits pose significant patient safety issues. Regrettably this was confirmed by the 12/24/16 near miss and her failure to even understand her error.

We have the ultimate responsibility to all patients our residents treat while in our program and all those they treat upon graduation, to ensure their safety and wellbeing. MBC does not have the knowledge and skills to provide safe and effective patient care.

Thank you for your time,

Erica Eichenberg

Probation Meeting:

Brad DeVries (BD) and I met with Marybeth (MB) as planned on Tuesday afternoon 12/20/2016 at 3:30p. That meeting lasted until just after 5p.

Summary:

I congratulated Marybeth on her ongoing hard work and positive attitude. Informed her that the CCC was pleased with some slight improvement seen on the ambulatory side. The CCC did recommend she remain Under Review for these ambulatory deficiencies. Marybeth mentioned that Dr. Davidian gave her high scores on her Women's Health evaluation. I did share with her that he consistently inflates evaluation scores with residents he works with and we have ongoing faculty development planned for him and all attendings with similar grading patterns.

The CCC did recommend Probation for Marybeth due to ongoing inpatient deficiencies, specifically outlined in the Probation letter we reviewed together. I shared with her that feedback was provided by her [illegible] supervisors, attendings as well as nursing (provided to me indirectly) on Night Float and HMS [illegible] had not completed at the time of our meeting).

- [illegible] to [illegible] with [illegible] to [illegible] [illegible]
- [illegible] management of common [illegible] [illegible] [illegible] [illegible] that she had a [illegible] [illegible] notes that were [illegible] copied and pasted from [illegible] [illegible] could have led to significant patient harm. [illegible] first week on HMS Block [illegible] concern was that she [illegible] [illegible] should have learned a lot and gained [illegible] her [illegible] as significantly as she did the first week of Block 6 [illegible] PD and [illegible] concerning that she does not recognize the potential patient safety issues that can arise from delays in care [illegible] in the probation letter), signing incorrect progress notes etc.
- [illegible] She later asked if there is any hope that she can improve [illegible] [illegible] HMS Block 10. [illegible] with her that my assessment [illegible] that her [illegible] of medical knowledge and patient care skills are extremely [illegible]. These are [illegible] because her foundation is so weak, she is not progressing as expected with each block. We [illegible] her inability to recognize an abnormal Urinalysis in July in the setting of a UTI in walk in clinic. That's an example of medical knowledge a medical student has that should be retained and her excuse that she was off 5 months prior does not hold up. I told her that I had expected her to make significant improvements from Block 6 Night Float to Block 8 HMS and because her first week was so poor and she's had only occasional good performances since, that I don't anticipate she'll be able to achieve the outcomes necessary for her to meet expectations [illegible] will have for all of our interns by March 8, 2017. However, the CCC, including me, want to offer her the opportunity to proceed through the next step if she wishes to continue on. We urged her to talk with Dr. Porter and GME if she has questions about alternative career options. I was unable to answer her question about whether she can do a Family Medicine residency instead because I'm not fully aware of how funding would work. She asked what the next step would be if she does not meet the expectations outlined in the probation document. We shared with her that, unless some egregious patient safety issue(s) arise, she could potentially complete her year with us. If the CCC determines she has not met competencies to progress to the PGY2 year, her contract would not be renewed because it would be her second time repeating the PGY1 year. GME contracts do not allow repeating the PGY 1 more than once.
- MB admitted that she sees herself in outpatient medicine after graduation. She does not like inpatient medicine, especially the brisk and demanding pace. She says she's not happy with it and isn't sure she wants to continue on with it. Our response was that Internal Medicine training includes inpatient and ambulatory competencies and the CCC is obligated to ensure our residents graduate with all or nearly all of them met, as we cannot regulate how graduating residents use their training.
- MB argued that she is replacing electrolytes, obtaining EKGs in chest pain patients etc. I shared with her that the delays and need for ongoing continuous supervision for tasks such as these to be completed are the ultimate concern. We expect an intern to get an EKG immediately upon seeing a patient with possible cardiac ischemia. Waiting to be reminded by the supervisor 1 hour later can make a difference in salvageable myocardium. I did not get the impression she agreed nor understood the importance of timing, despite [illegible] efforts to discuss this in detail.
- At one point MB wanted to discuss "last year", who I we "terminated her". I reminded her that we did not terminate her. I did let her know that this type of discussion would require GME and others involvement because I was not program director at that point, was not privy to all the details. She pushed the issue further and I did remark that her having an attorney makes it important that such discussions as she was wanting should take place with more counsel around me.

Attachment [illegible](a)